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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

GARY LEE HENSLEY AND WANDA  
RENAULT HENSLEY, d.b.a.  
ELECTRONIC SYSTEMS REPAIR,

Plaintiff,

vs.

UNITED STATES DRUG  
ENFORCEMENT  
ADMINISTRATION, et. al.,

Defendant.

CASE NO. 07-CV-0398 W (NLS)

ORDER GRANTING  
DEFENDANTS' MOTION TO  
DISMISS PLAINTIFFS' FIRST  
AMENDED COMPLAINT  
WITHOUT PREJUDICE (Doc.  
Nos. 27, 29.)

On August 31, 2007 Plaintiffs Gary Lee Hensley and Wanda Renault Hensley ("Plaintiffs") filed a first amended complaint ("FAC") against Defendants United States Drug Enforcement Administration ("DEA"), City of San Buenaventura ("City"), and Mike Freeman d.b.a. San Buenaventura Freeway Mini Storage ("Freeman") alleging deprivation of constitutional rights, unlawful search and seizure, and conversion of certain business property. (Doc. No. 25.) Pending before the Court are Defendant City's and Defendant Freeman's motions to dismiss the FAC for failure to state a claim and lack of subject matter jurisdiction. (Doc. Nos. 27, 29.) The Court decides the matter on the papers submitted and without oral argument. See S.D. Cal. Civ. R. 7.1(d.1). For the following reasons, the Court **GRANTS** Defendants' motions and **DISMISSES**

1 Plaintiffs' entire FAC WITHOUT PREJUDICE.

2  
3 I. BACKGROUND

4 Plaintiffs Gary Lee Hensley and Wanda Renault Hensley are California citizens  
5 who owned and operated a business called Electronic Systems Repair. (FAC ¶1.) On  
6 December 20, 1991 the City and DEA allegedly searched Plaintiffs' residence, seized  
7 Plaintiffs' property, and arrested Gary Lee Hensley on drug charges. (FAC ¶¶20, 22.)  
8 Legal wrangling over the forfeiture of Plaintiffs' property commenced, and in late 1994  
9 the litigation apparently terminated in Plaintiffs' favor. (Pls.' Opp'n 12.)

10 Defendant Mike Freeman is the owner of San Buenaventura Freeway Mini, a.k.a.  
11 Freeway Ministorage, a California business entity. (FAC ¶5.) On September 19, 2001  
12 and January 14, 2002 Plaintiffs executed two leases with Freeman's business for the use  
13 of a self-storage unit. (FAC ¶¶75, 76.) In early February, 2003 Plaintiffs allege that  
14 Freeman refused access to their unit, and shortly thereafter auctioned their property.  
15 (FAC ¶¶81-86.)

16 On March 1, 2007 Plaintiffs filed a complaint against the City, DEA, and Freeman  
17 alleging constitutional rights violations, unlawful search and seizure, and conversion of  
18 business property. (Doc. No. 1.) On May 21 and 22, 2007 the City and Freeman moved  
19 to dismiss Plaintiffs' complaint for failure to state a claim and lack of subject matter  
20 jurisdiction. (Doc. Nos. 8, 11.) On July 25, 2007 the Court granted Defendants'  
21 motions and gave Plaintiffs leave to amend. (Doc. No. 23.)

22 On August 31, 2007 Plaintiffs filed their first amended complaint ("FAC"),  
23 alleging the same or similar claims on roughly the same facts. (Doc. No. 25.) On  
24 September 12 and 17, 2007 the City and Freeman again moved to dismiss the FAC for  
25 failure to state a claim and on jurisdictional grounds. (Doc. Nos. 27, 29.) On October  
26 24, 2007, despite a failure to timely serve Defendants, the Court accepted Plaintiffs'  
27 opposition.

28

## 1 II. LEGAL STANDARD

2 Rule 12(b)(6) permits the court to dismiss a complaint, or a count therein, for  
 3 failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A  
 4 motion to dismiss under this rule tests the complaint's sufficiency. See N. Star Int'l v.  
 5 Ariz. Corp. Comm'n, 720 F.2d 578, 581 (9th Cir. 1983). Dismissal of a claim according  
 6 to this rule is proper only in "extraordinary" cases. United States v. Redwood City, 640  
 7 F.2d 963, 966 (9th Cir. 1981). However, where the facts and dates alleged in the  
 8 complaint indicate the claim is barred by the statute of limitations, a motion to dismiss  
 9 for failure to state a claim is appropriate. Jablon v. Dean Witter & Co., 614 F.2d 677,  
 10 682 (9th Cir. 1980).

11 A complaint may be dismissed as a matter of law for two reasons: (1) lack of a  
 12 cognizable legal theory, or (2) insufficient facts under a cognizable theory. Robertson  
 13 v. Dean Witter Reynolds, Inc., 749 F.2d 530, 534 (9th Cir. 1984). As the Supreme  
 14 Court recently explained, "[w]hile a complaint attacked by a Rule 12(b)(6) motion to  
 15 dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the  
 16 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a  
 17 formulaic recitation of the elements of a cause of action will not do." Bell Atl. Corp.  
 18 v. Twombly, — — — U.S. — — —, — — —, 127 S. Ct. 1955, 1964 (2007). Rather, the  
 19 allegations in the complaint "must be enough to raise a right to relief above the  
 20 speculative level." Id. at 1964–65. All material allegations in the complaint, "even if  
 21 doubtful in fact," are assumed to be true, id., and the court must "construe them in the  
 22 light most favorable to the nonmoving party," Gompper v. VISX, Inc., 298 F.3d 893,  
 23 895 (9th Cir. 2002). In other words, the court construes the complaint and all  
 24 reasonable inferences in the plaintiff's favor. Walleri v. Fed. Home Loan Bank of  
 25 Seattle, 83 F.3d 1575, 1580 (9th Cir. 1996).

## 26 27 III. DISCUSSION

28 As a threshold matter, the Court must attempt to untangle the legal theories and

1 jurisdictional bases on which Plaintiffs' FAC seeks relief. Regrettably, the FAC is  
 2 disorganized and contains many false statements of law, and Plaintiffs' Opposition brief  
 3 does little to clarify the issues.

4 As best the Court can discern, Plaintiffs' FAC has 5 claims: (1) Deprivation of  
 5 Constitutional Rights of [Amendment] I, IV, V, VIII, and XIV; (2) Unlawful Arrest;  
 6 Search; Seizure; and Incarceration; (3) Damages for Conversion of Scientific Business  
 7 Property; (4) Unlawful Seizure and Conversion of Business Property; and (5) Injunctive  
 8 Relief and Security Bond. The first two claims, against the City and DEA, both appear  
 9 to be premised on federal Constitutional grounds. (FAC ¶¶16, 37.) The third claim  
 10 appears to mix federal relief (Federal Tort Claims Act relief against DEA) and California  
 11 relief (California Tort Claims Act ("CTCA") relief against City). (FAC ¶68.) The fourth  
 12 claim appears to be a state law cause of action against the City, DEA, and Freeman.  
 13 (FAC ¶¶74, 84-85.) Plaintiffs' fifth claim requests that the Court enjoin all Defendants  
 14 from interfering with their property rights or blocking access to state court.<sup>1</sup> (FAC ¶91-  
 15 92.)

16  
 17 **A. PLAINTIFF'S FEDERAL CLAIMS AGAINST THE CITY AND DEA ARE**  
 18 **TIME-BARRED**

19 The City argues that Plaintiffs complain of conduct that allegedly occurred on  
 20 December 20, 1991. Because Plaintiffs waited almost sixteen years in which to file a  
 21 federal court claim, any claim is barred by the statute of limitations. (City's Mot. 7-8.)  
 22 Plaintiffs respond by arguing that the City caused all the delay, and submit a timeline  
 23 listing the City's and DEA's transgressions and Plaintiffs' continued forays into the  
 24 California courts. Additionally, Plaintiffs allude to random bits of law and fact outside  
 25 the scope of this motion to dismiss. See North Star Int'l v. Arizona Corp. Comm'n., 720

26  
 27 <sup>1</sup>Plaintiffs also request that each Defendant post a security bond under Federal Rule of  
 28 Civil Procedure 65. (Compl. ¶96.) However, this rule only requires that the applicant for an  
 injunction post a security bond. Fed. R. Civ. P. 65. Accordingly, this part of the claim is  
 dismissed.

1 F.2d 578, 581 (9th Cir. 1983) (holding that inquiry is limited to the content of the  
2 complaint).

3 Although Plaintiffs' FAC contains much irrelevant information and incorrect law,  
4 the Court assumes without deciding that, viewing the FAC in an extremely generous  
5 light, Plaintiffs first three causes of action may state claims for 42 U.S.C. § 1983  
6 ("1983"), Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics, 403  
7 U.S. 388 (1971) ("Bivens"), and/or Federal Tort Claims Act ("FTCA") violations.<sup>2</sup> (FAC  
8 ¶¶ 9, 11, 16, 37, 68.) Section 1983 and Bivens claims essentially provide damage  
9 remedies for Constitutional rights violations committed by state or federal actors. The  
10 FTCA represents a limited waiver of sovereign immunity and supports original federal  
11 jurisdiction for certain tort claims brought against the United States. See 28 U.S.C.  
12 § 1346(b). These claims are the most logical vehicles available for Plaintiffs to recover  
13 damages against the City (state actor) and DEA (federal agency) for alleged First, Fourth,  
14 Fifth, Sixth, and Fourteenth Amendment and tort violations.<sup>3</sup>

15 \_\_\_\_\_  
16 <sup>2</sup>42 U.S.C. § 1983 allows a plaintiff to sue in federal court for Constitutional and civil  
17 rights violations committed by state actors. Because the City is not a person, however, Plaintiffs'  
18 FAC may still suffer from an Eleventh Amendment or sovereign immunity problem. See Doe  
v. Lawrence Livermore Nat'l Lab., 131 F.3d 836, 839 (9th Cir. 1997).

19 A Bivens claim is similar to a Section 1983 claim, but against a federal, not state, official.  
20 See Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388, 395-97  
(1971).

21 <sup>3</sup>As mentioned above, the Court is not entirely convinced that Plaintiffs have sufficiently  
22 pled facts establishing a *prima facie* case of any Constitutional or tort violation. For example,  
23 although Plaintiffs allege that "a later [California] State Court judge found the search warrant  
24 invalid, since [sic] he found it was solely issued on fourth-party hearsay evidence," warrants are  
25 not invalid because they are based on hearsay. United States v. Castillo, 866 F.2d 1071, 1077  
26 (9th Cir. 1988). Rather, a magistrate can issue a valid warrant based on the "totality of the  
27 circumstances." United States v. Bishop, 264 F.3d 919, 924 (9th Cir. 2001.) Because Plaintiffs  
28 have offered no other facts as to why the warrant was invalid, the Court cannot accept Plaintiffs'  
legal conclusion as true merely because it is framed as a factual allegation. See W. Mining  
Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981); Ileto v. Glock Inc., 349 F.3d 1191, 1200  
(C.D. Cal. 2003). P

Furthermore, Plaintiffs' FAC is disorganized, contains many conclusory statements,  
incoherently mixes facts and legal theories, and hardly raises the right to relief above a speculative  
level. See Bell Atl. Corp. v. Twombly, 127 S. Ct. 1955, 1964 (2007). However, viewing all

1 The statutes of limitations for Section 1983 and Bivens claims are identical. Van  
2 Strum v. Lawn, 940 F.2d 406, 409-10 (9th Cir. 1991). Because Section 1983 does not  
3 have its own limitation period, courts are instructed to borrow the limitation period from  
4 personal injury actions of the state in which the court sits. Wilson v. Garcia, 471 U.S.  
5 261, 276-79 (1985). In California, there is a two-year statute of limitation on personal  
6 injury claims; thus, this is the limitation period applied to Section 1983 and Bivens  
7 claims. CAL. CIV. PROC. CODE § 335.1; Maldonado v. Harris, 370 F.3d 945, 954 (9th  
8 Cir. 2004). Under federal law, the limitation period starts to run when the plaintiff  
9 knows or has reason to know of the injury which is the basis of the action. TwoRivers  
10 v. Lewis, 174 F.3d 987, 991-92 (9th Cir. 1999). Analyzing a Federal Tort Claims Act  
11 limitation period is nearly identical. See 28 U.S.C. § 2401(b) (two-year statute of  
12 limitations governs FTCA claims); Winter v. United States, 244 F.3d 1088, 1090 (9th  
13 Cir. 2001) (FTCA claim accrues as a matter of federal law "when a plaintiff knows that  
14 he has been injured and who has inflicted the injury").

15 The events forming the basis of Plaintiffs' first two claims took place on December  
16 20, 1991 when the City and DEA allegedly searched Plaintiffs' residence, arrested Gary  
17 Hensley, seized Plaintiffs' equipment, and refused to return it. (FAC ¶¶16-48.) Because  
18 Plaintiffs knew of the alleged illegal search and seizure on December 20, 1991, under  
19 California and federal law the statute of limitations would expire on December 20, 1993.  
20 However, Plaintiffs filed their original federal complaint on March 1, 2007, over 15 years  
21 later. Thus, any Section 1983, Bivens, or FTCA claim arising out of the December 20,  
22 1991 search and seizure is time-barred.

23 Plaintiffs also claim that the City/DEA agreed to release their property, but never  
24 followed through. (FAC ¶¶ 28-33.) Assuming without deciding that Plaintiffs have pled  
25 a recognizable federal claim, the California court's Order for Return of Property was filed  
26 March 25, 1992. (FAC Ex. D.) Even if it did not become immediately apparent that the  
27

28 \_\_\_\_\_  
inferences in favor of these *pro se* Plaintiffs, the Court finds that resolving the FAC's deficiencies  
on statute of limitations grounds provides a better framework to resolve the case.



1 City/DEA would not return their property, Plaintiffs should have had reason to know  
2 of this after a reasonable amount of time. For arguments sake, generously allowing  
3 Plaintiffs one year to acquire "knowledge" of injury, plus a two-year statute of limitation,  
4 fixes the period in which to file a valid claim ending March 25, 1995. Accordingly,  
5 Plaintiffs' Section 1983, Bivens, and/or FTCA claims premised on the City's alleged  
6 continuing unlawful possession of Plaintiff's property are time-barred.

7 Although Plaintiffs argue that any delay and indifference was the City's fault,  
8 Plaintiffs have provided no credible evidence or advanced any legal theories as to why the  
9 statute of limitations should be tolled or extended. (Pls.' Opp'n 12.) In short, Plaintiffs  
10 now seek federal relief for events that happened over fifteen years ago. Under Jablon, a  
11 motion to dismiss is appropriate where the facts and dates alleged indicate the claim is  
12 barred by the statute of limitations. Because under no circumstances can the facts and  
13 dates alleged in Plaintiffs' FAC support a federal claim that is not time barred, the Court  
14 **GRANTS** the City's Motion and dismisses Plaintiffs' first three claims **WITHOUT**  
15 **PREJUDICE**.

16  
17 **B. THE COURT DECLINES TO EXERCISE SUPPLEMENTAL JURISDICTION**  
18 **OVER PLAINTIFF'S REMAINING CLAIMS PURSUANT TO 28 U.S.C. § 1367.**

19 After dismissing Plaintiffs' federal causes of action, the Court recognizes that  
20 Plaintiffs may have pled the following state law claims: (1) a CTCA claim against the City  
21 (third cause of action); and (2) Unlawful seizure and conversion of business property  
22 against City, DEA, and Freeman (fourth cause of action). Even if Plaintiffs' allegations  
23 state a claim for relief, neither claim has original jurisdiction in this Court.

24 In civil cases, subject matter jurisdiction is generally conferred upon federal district  
25 courts either through diversity jurisdiction, 28 U.S.C. § 1332, or federal question  
26 jurisdiction, 28 U.S.C. § 1331. Without a federal question, state law claims in federal  
27 court require complete diversity, or each of the plaintiffs must be a citizen of a different  
28 state than each of the defendants. Allstate Ins. Co. v. Hughes, 358 F.3d 1089, 1095 (9th  
Cir. 2004). For individuals, citizenship is determined by the state where one is

1 domiciled. Kantor v. Wellesley Galleries, Ltd., 704 F.2d 1088, 1090 (9th Cir. 1983).  
 2 Local governments are citizens of the states in which they are located. Moor v. County  
 3 of Alameda, 411 U.S. 693, 717 (1973).

4 Where a state law claim forms part of the same “case or controversy” as another  
 5 valid claim within original jurisdiction, 28 U.S.C. § 1367 provides supplemental  
 6 jurisdiction. 28 U.S.C. § 1367(a) (2000). However, it is well-settled that 28 U.S.C.  
 7 § 1367(c) grants district courts broad discretion to decline supplemental jurisdiction  
 8 over existing state law claims where they “substantially predominate over the [federal]  
 9 claim or claims over which the district court has original jurisdiction” or in other  
 10 circumstances where “there are other compelling reasons for declining jurisdiction.” 28  
 11 U.S.C. §§ 1367(c)(2), (c)(4); see Edmondson & Gallagher v. Alban Towers Tenants  
 12 Ass’n, 48 F.3d 1260, 1266 (D.C. Cir. 1995). Also, “[i]f the federal claims are dismissed  
 13 before trial . . . the state claims should be dismissed as well.” Imagineering, Inc. v.  
 14 Kiewit Pacific Co., 976 F.2d 1303, 1309 (9th Cir. 1992) (federal court should dismiss  
 15 state law claims if federal claims are dismissed before trial).

16 Neither Plaintiffs’ CTCA claim against the City nor the conversion claim against  
 17 the City, DEA and Freeman has original jurisdiction in this Court. Federal question  
 18 jurisdiction does not exist because the claims are premised on state law. Diversity  
 19 jurisdiction does not exist because Plaintiffs, citizens of California, are suing the City,<sup>4</sup>  
 20 considered a California citizen under Moor. Moreover, the fifth claim for injunctive  
 21 relief against all defendants fails to allege any jurisdictional basis, and appears to be a  
 22 crude attempt to counter the Court’s previous Eleventh Amendment concerns.<sup>5</sup> (See  
 23 Order Granting City’s Mot. to Dismiss 4.)

24 As discussed in Part A, the Court dismisses all claims over which it has original  
 25 jurisdiction. Under Imagineering, the Court declines to exercise supplemental  
 26 jurisdiction over any remaining claims, and thus **GRANTS** the Defendants’ Motions and  
 27

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28 <sup>4</sup>The Court takes judicial notice that the City is located in the state of California.

<sup>5</sup>Additionally, the fifth claim would be unlikely to survive a 12(b)(6) motion to dismiss.



1 DISMISSES WITHOUT PREJUDICE Plaintiffs' remaining state law claims.<sup>6</sup>

2  
3 **IV. CONCLUSION**

4 Plaintiffs' FAC is their second attempt to petition this Court for relief.  
5 Generously assuming that Plaintiffs' FAC states cognizable causes of action, the  
6 information before the Court shows that any claims with in the Court's original  
7 jurisdiction have long been time-barred. Additionally, Plaintiffs' current claim(s) arising  
8 from the 2003 dispute have no independent basis of jurisdiction, and the Court declines  
9 to exercise supplemental jurisdiction over any remaining claims.

10 Should Plaintiffs petition this Court a third time for relief, the Court suggests that  
11 Plaintiffs not simply re-hash the same dated grievances, conclusory allegations, and  
12 misstated law found in the Complaint and FAC. Rather, the Court expects proper  
13 jurisdictional allegations and short statements of fact alleged with the specificity needed  
14 to support particular causes of actions. If this is not possible, Plaintiffs are asked to think  
15 hard about whether to pursue their claims in this Court.

16 In conclusion:

- 17 1. The City's Motion to Dismiss is **GRANTED** as to the first three federal  
18 causes of action against the City and/or DEA because the facts and dates  
19 alleged in the FAC indicate that any claim is time-barred. (Doc. No. 29.)
- 20 2. Freeman's Motion to Dismiss is **GRANTED** as to the fourth and fifth  
21 causes of action because complete diversity does not exist among the parties  
22 and Plaintiffs do not allege how their claim for injunctive relief meets  
23 federal jurisdictional requirements . (Doc. No. 27.)


24  
25 <sup>6</sup>Once again, the Court questions whether supplemental jurisdiction could ever properly  
26 join the state law claims against Freeman with the federal claims against the City and DEA. Two  
27 distinct factual nuclei exist: the December 1991 search and seizure of Plaintiffs' property, and  
28 a 2003 dispute involving the self-storage unit. As per Article III of the United States  
Constitution, supplemental jurisdiction is only proper if the claims are part of the same "case  
or controversy." 28 U.S.C. § 1367. At a minimum, the FAC must reveal some logical operative  
connection between the 1991 seizure and the 2004 conversion. None seems to exist. (See Order  
Granting City's Mot. to Dismiss 6-7.)

1           3.     Because all claims over which the Court has original jurisdiction are  
2               dismissed, the Court declines to exercise supplemental jurisdiction over any  
3               remaining claims consistent with 28 U.S.C. § 1367(c).

4           4.     Plaintiffs' entire FAC is **DISMISSED WITHOUT PREJUDICE**. If  
5               Plaintiffs wish to amend their complaint, they may do so by December 28,  
6               2007.

7  
8           **IT IS SO ORDERED.**

9  
10          Dated: November 27, 2007

  
\_\_\_\_\_  
Hon. THOMAS J. WHELAN  
United States District Court  
Southern District of California